

**2005 DRAFTING REQUEST**

**Bill**

Received: 09/27/2004

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Administration-Budget

By/Representing: Koskinen

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax, Individual - income  
Tax, Business - crp inc, fran

Extra Copies:

Submit via email: YES

Requester's email:

Carbon copy (CC:) to: joseph.kreye@legis.state.wi.us

**Pre Topic:**

DOA:.....Koskinen, BB0079 -

**Topic:**

Internal Revenue Code update

**Instructions:**

See Attached

**Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>       | <u>Reviewed</u>                                  | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>      | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|--|------------------------|----------------|-----------------------|-----------------|-----------------|
| /?           | jkreye<br>10/07/2004 | kfollett<br>10/07/2004<br>kfollett<br>10/21/2004 |                        | _____          |                       |                 | State<br>Tax    |
| /1           | jkreye<br>12/22/2004 | kfollett<br>12/22/2004                           | pgreensl<br>10/21/2004 | _____          | lemery<br>10/21/2004  |                 | State<br>Tax    |
| /2           | jkreye<br>01/24/2005 | csicilia<br>01/24/2005                           | chaugen<br>01/07/2005  | _____          | mbarman<br>01/07/2005 |                 | State<br>Tax    |

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| /3 | jkreye<br>01/28/2005 | kfollett<br>01/28/2005 | chaugen<br>01/24/2005 | _____ | sbasford<br>01/25/2005 |  | State<br>Tax |
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| /4 |  |  | rschluet<br>01/28/2005 | _____ | lemery<br>01/28/2005 |  |  |
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chaugen \_\_\_\_\_  
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*Handwritten notes:*  
OK 1-24  
3/25/05  
OK 1-24

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12-23

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /?           | jkreye         | 11/15/04        | 10/21/04     | 10/21/04       |                  |                 |                 |
|              |                | 10/21/04        | PS           | PS             | 1/5              |                 |                 |

FE Sent For:

<END>



BB0079

### 2003-05 Budget Bill Statutory Language Drafting Request

- Topic: Internal Revenue Code (IRC) Update
- Tracking Code: (Assigned by Government Operations Team)
- SBO team: Tax & Justice
- SBO analyst: Sarah Justus
  - Phone: 7-6921
  - Email: sarah.justus@doa.state.wi.us
- Agency acronym: DOR
- Agency number: 566

DS-302

**Statutory Language Request  
Wisconsin Department of Revenue**

**TITLE: INTERNAL REVENUE CODE UPDATE**

**DESCRIPTION OF CURRENT LAW AND PROBLEM**

Wisconsin generally conforms the tax bases for the state individual income and corporate income and franchise taxes to the bases for the federal income taxes by adopting annually changes in the Internal Revenue Code (IRC) made in the prior year. Thus far in 2004, Congress has enacted no substantive changes in the IRC; however, several bills are pending and the state should consider their adoption should they be enacted.

In addition, the Legislature has not adopted federal laws enacted during 2003 that amend the IRC, including:

- Public Law 108-27, the Jobs and Growth Tax Relief Reconciliation Act (JGTRRA),
- Public Law 108-121, the Military Family Tax Relief Act (MFTRA), and
- Public Law 108-173, the Medicare Prescription Drug, Improvement and Modernization Act (MPDIMA).

Wisconsin also conforms to innocent spouse relief provisions of the Internal Revenue Code; however, Wisconsin statutes contain an incorrect reference to the IRC and fail to provide the two-year period allowed under federal law for applying for such relief.

**RECOMMENDATION FOR ACTION**

For tax years beginning prior to January 1, 2005, update references in the statutes to the IRC to include changes enacted through December 31, 2004, except for sections 106, 201 and 202 of Public Law 108-27 (JGTRRA) and section 1201 of Public Law 108-173 (MPDIMA). The exceptions are for an increase in the alternative minimum tax exemption, an increase in and extension of bonus depreciation, and expensing provisions, all contained in JGTRRA, and the health savings account (HSA) provisions of MPDIMA. The Department of Revenue (DOR) may suggest further exceptions for legislation enacted during 2004.

JGTRRA provides increased federal minimum tax exemptions for tax years 2003 and 2004. Wisconsin could adopt these changes only retroactively, in 2005 after most 2003 and 2004 returns are filed. Retroactive adoption of the higher exemption amounts would require filing of amended returns for those two tax years by about 4,000 taxpayers, and Department processing of those returns.

Wisconsin should not adopt the bonus depreciation and expensing provisions of JGTRRA for fiscal reasons – revenue loss in FY05 in excess of \$100 million from the bonus depreciation provisions and of \$19.4 million from the expensing provisions. Wisconsin did not adopt the original bonus depreciation provisions when they were enacted in 2002. For expensing, Wisconsin would continue to conform to federal provisions in effect prior to adoption of JGTRRA.

The provisions being adopted should apply for Wisconsin purposes at the same time they apply for federal purposes, with one exception. Section 109 of 108-121, relating to a deduction for travel expenses for members of the National Guard and Reserve, should be adopted prospectively, for tax years beginning after December 31, 2004, rather than retroactively to tax year 2003, when the deduction takes effect for federal purposes.

Wisconsin should not adopt the HSA provisions of MPDIMA because that program is not an effective means of providing insurance and is likely to increase the number of uninsured.

Correct the reference in Wisconsin to IRC innocent spouse relief provisions and provide the two-year period allowed under federal law for applying for such relief.

### **ADMINISTRATIVE IMPACT**

Adopting federal IRC provisions generally eases preparation of tax returns by taxpayers and tax processing and administration by DOR.

Several provisions of JGTRRA and MFTRA take effect for federal tax purposes in tax year 2003. Because these provisions have not yet been adopted for Wisconsin tax purposes, taxpayers will be required to complete Schedule I when filing their Wisconsin income tax returns for 2003 and 2004 to account for differences between federal and Wisconsin treatment. If Wisconsin adopts these provisions retroactively, taxpayers will have to file amended returns for tax year 2003.

Despite this need to file and process amended returns, DOR recommends that Wisconsin adopt the provisions of JGTRRA (except for the minimum tax exemption, bonus depreciation and expensing provisions) and MFTRA for Wisconsin purposes at the same time as they take effect for federal purposes, except for the deduction for travel expenses for Guard and Reserve members. Adoption of MFTRA will allow members of the military serving in Iraq and Afghanistan and their families to receive the same tax relief for state purposes that is provided under federal law.

Correcting the reference to the IRC and providing the same filing period allowed under federal law in the state's innocent spouse provisions will avoid confusion in the administration of these provisions.

### **FAIRNESS /TAX EQUITY**

Members of the military serving in Iraq and Afghanistan and their families would be provided tax relief by adopting provisions of MFTRA.

Correcting the reference to federal innocent spouse provisions and providing the same filing period as allowed under federal law will ensure taxpayers receive the protections provided by these IRC sections.

### **IMPACT ON ECONOMIC DEVELOPMENT**

Businesses would have a greater incentive to invest if Wisconsin adopted the federal bonus depreciation and the increase in expensing permitted under Section 179 of the

IRC. However, the reduced incentive is not likely to have a substantive impact on investment, given the sizable incentive afforded under federal law.

#### **FISCAL EFFECT**

FY06: -\$1.0 million; FY07: -\$0.5.

#### **DRAFTING INSTRUCTIONS**

Amend secs. 71.01 (6), 71.22 (4) and (4m), 71.26 (2), 71.34 (1g) and 71.42 (2) to adopt provisions of federal laws amending the IRC enacted in 2003 and 2004, except for except for sections 106, 201 and 202 of Public Law 108-27 and section 1201 of Public Law 108-173.

Create sec. 71.10 (6)(e) and (6m)(c) to allow persons two years to apply for innocent spouse relief, and amend sec. 71.10 (6)(a) and (b) and (6m)(a) to provide exceptions for these newly created sections. Amend sec. 71.10 (6)(a) to replace the reference to section 6013 (e) of the IRC with a reference to section 6015 (a) to (d) and (f) of the IRC. [Language making these changes previously was drafted as sections 5 to 9 of 1999 LRB 2437/1.]

#### **EFFECTIVE DATE AND/OR INITIAL APPLICABILITY**

The provisions of changes to the IRC laws should apply for Wisconsin purposes at the same time that they apply for federal purposes, except Section 109 of Public Law 108-121 should first apply for tax years beginning after December 31, 2004. The innocent spouse provisions should take effect the day after publication.

#### **INTERESTED/AFFECTED PARTIES**

Businesses making investments qualifying for the bonus depreciation and Section 179 expensing provisions of JGTRRA; persons paying the Wisconsin alternative minimum tax; members of the military serving in Iraq and Afghanistan and their families; persons opening HSAs under MPDIMA; tax preparers.

#### **PREPARED BY**

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[dcollier@dor.state.wi.us](mailto:dcollier@dor.state.wi.us)